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(1)

Supreme Court, U.S.
FILED

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NO.

IN THE
SUPREME COURT OF THE UNITED STATES

BENNON L. PRINE, JR.

Petitioner

VS.

CHAILLAND INC.
HOSPITAL AMBULANCE LLC
LUMBERMEN'S UNDERWRITING ALLIANCE
DONALD WALTERS
JOHN AND/OR JANE DOE
EDWARD "DAN" WINGARD
CAMBRIDGE INTEGRATED SERVICES GROUP INC.
ROBIN DEMELLO
ANN MORGAN-MITCHELL

Respondents

On Petition for Certiorari to the United States Court of Appeals for the Eleventh Circuit

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PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

"Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court..." 18 USC § 1964 (c) (RICO)

1) Where the United States Congress has granted direct and unconditioned access of Article 3 Courts to victims of a Racketeering Influenced Corrupt Organization (RICO), and where the filing of a State Administrative action does not toll the statute-of-limitations time-frame for the filing of a Federal RICO action, and the duration of a state's administrative proceedings would foreseeably extend beyond the date allowable for filing a federal RICO action, did the Eleventh Circuit (and/ or its judicial officers acting in official capacity) violate the 1st Amendment (right to seek redress), 5th Amendment (due process), 7th Amendment (right to jury trial), U.S. Const. art. VI, Paragraph 2 (supremacy clause), or the 14th Amendment (equal protection under the law) of the United States Constitution and impermissibly create an impossible hardship for gaining access to an Article 3 Court by requiring an exhausted successful action in a state administrative forum before the filing of a federal RICO complaint?

2) Did the 11th Circuit, in conflict with the US Supreme Court, err when it found that a federal RICO complaint premised on "injury to business" was not ripe for adjudication because the *accrued value* of an attached State law claim for workers compensation (injury to property) was unsettled?

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PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case and in support shows as follows:

OPINIONS BELOW

Both the District Court and the Circuit Court opinions were labeled "DO NOT PUBLISH"

JURISDICTION

The judgment of the court of appeals was entered on November 9, 2010. This Court's jurisdiction rests on 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS

Supremacy Clause

"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the contrary notwithstanding." U.S. Const. art. VI, Paragraph 2

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to

assemble, and to petition the government for a redress of grievances.

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VII

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.

Amendment XIV

Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any

person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATUTORIAL PROVISIONS

18 USC § 1964 (c) (RICO)

Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee, except that no person may rely upon any conduct that would have been actionable as fraud in the purchase or sale of securities to establish a violation of section 1962. The exception contained in the preceding sentence does not apply to an action against any person that is criminally convicted in connection with the fraud, in which case the statute of limitations shall start to run on the date on which the conviction becomes final.

STATEMENT OF CASE

Background

In 2008 the United States Congress held hearings and published a report entitled "HIDDEN TRAGEDY: Underreporting of workplace Injuries and Illness." This report discusses the manners, methods, motivations employers, insurance companies, etc. have for hiding work-place injuries.

This case exemplifies congressional concerns about the illegal lengths exerted to deny an injured worker legally entitled benefits.

By underreporting workplace injuries companies are able to wrongfully deny medical care and wage benefits to injured workers which results in employers lowering workers compensation insurance premiums and insurance companies saving millions of dollars each year in statutory required medical reserves, payments to state health funds, state insurance premium taxes, Medicaid, Medicare/ Social Security set-asides. The intent is to increase personal and business profitability by interfering with an injured worker's common-law, statutory and contractually protected rights.

Until recently no viable recourse existed for curing this conduct; while the goal of the fraudulent conduct was to deprive an injured worker of legally required benefits, the persons relying on the fraud were third parties, ie physicians[1], insurance companies, state governmental agencies. Bridge v. Phoenix Bond & Indem. Co. 128 S. Ct. 2131, 553 US 639, 170 L. Ed. 2d 1012 – (Supreme Court, 2008) changed this and allows, "a plaintiff asserting a RICO[2] claim predicated on mail fraud need not show, either as an element of its claim or as a prerequisite to establishing proximate causation,

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[1] Physicians have also been implicated as co-conspirators in these schemes.

[2] Racketeering Influenced Corrupt Organization 18 U.S.C. §§ 1961 *et seq.*

that it relied on the defendant's alleged misrepresentations."

This petition is a FIRST IMPRESSION in the Supreme Court to address RICO ripeness where workers compensation entitlements have been fraudulently interfered with.

Petitioner, a Georgia certified Paramedic, was injured within a manner covered by the scope of workers compensation (WC) laws. Petitioner immediately, sought and received medical care and immediately received 1 benefit check for lost wages. Here though is where the proper payment of this claim stops.

Chailland Inc. (Chailland)[3] a licensed Professional Employer Organization headquartered in Louisiana fraudulently represented to physicians treating Petitioner that it was in fact an insurance company; Hospital Ambulance LLC (HA) a Georgia based ambulance service leasing petitioner from Chailland fraudulently represented itself as the employer[4]. These two companies then intercepted all medical related inquiries, prevented and directed medical treatment[5], prevented and bypassed statutory required workers compensation carrier investigation and bypassed State of Georgia administrative

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[3] Chailland is not self-insured.

[4] By law, they are not the employer of record (master), but a form of "special master"

[5] No person involved in the conspiracy is a licensed physician.

protections designed for the benefit of employers and employees alike. This conduct was determined to have involved a sufficient number of victims over a short enough period of time to satisfy a RICO claim.

When alerted to this scheme, Lumbermen' Underwriting Alliance (Lumbermen) and Cambridge Integrated Services (Cambridge) aided and abetted, and joined in the conspiracy by perpetrating fraud on the State of Georgia and Petitioner by failing to submit statutory required documents and submitting documents with fictitious information on them.

To date, neither the respondents nor the courts have asserted that petitioner's complaint does not state a cause of action for a RICO claim – a claim where original jurisdiction rests solely in the federal court system. The central point of contention has been how a state-law workers-compensation matter inter relates and is properly managed when attached to a RICO complaint in some manner. The facts in this matter are clear-cut, what laws apply and how they are to be applied are in dispute.

<u>District Court Proceedings</u>

Petitioner filed a RICO complaint and the Respondents responded with a motion to dismiss for lack of subject-matter jurisdiction pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure. The District Court granted this motion and dismissed the case without prejudice finding that until a state

administrative forum had first ruled on the merits of any WC entitlement and issued an order containing its value, the case was not ripe for adjudication in a Federal forum.

This order is both procedurally and substantively flawed in that:

Constitutional Deprivations

1) Petitioner is entitled to a judge that is, *as sober as a judge*, in any other District or Circuit court.

In a criminal complaint filed in the United States District Court, Northern District of Georgia, case number: 10-MJ-1415, the United States of America alleged that then Judge Jack T Camp, Jr. "an unlawful user of controlled substances," in or around spring time[6], engaged in number of federal crimes centering on his use of, "to wit, cocaine hydrochloride, a Schedule II controlled substance, marijuana, a schedule I controlled substance and roxycodone."

In open court, where a plea-bargain left out illegal firearms charges and court property diversion, Jack T Camp, Jr.[7] was read aloud the charges against him by the presiding judge and asked if these charges were true. Former Federal Judge Jack T Camp Jr

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[6] At or around the time he rendered a decision in this case.

[7] Judge Camp resigned as a Federal judge the day before.

then replied, ""I regret ... I'm embarrassed it is, your honor."[8]

Petitioner's constitutionally protected right to equal protection under the law and due process (14th and 5th Amendments) were violated when the court did not provide a sober judge, and a judge possessing the moral and ethics compass required of a judiciary officer.

2) Respondents sought dismissal based on lack subject-matter jurisdiction pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure based on standing. (Respondents never even once uttered the word ripeness.)

Judge Camp stated in the order of dismissal, "Although Defendants assert this issue as one of standing, it is better framed as one of ripeness." "Plaintiff's RICO claims are not ripe and subject to dismissal."

> "The ripeness doctrine is often confused with the standing doctrine. Whereas ripeness is concerned with *when* an action may be brought, standing focuses on *who* may bring a ripe action. E. Chemerinsky, *Federal Jurisdiction* § 2.4, at 99 & n. 1 (1989). Although these doctrines are analytically distinct, both have evolved from Article III's case or controversy requirement." Armstrong

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[8] The Atlanta Journal-Constitution, November 19, 2010, Metro Atlanta /State News Section.

World Industries v. Adams, 961 F. 2d 405 – (3rd Circuit 1992)(Footnote 13)

In Allen v. Wright, 468 US 737 *at 750* – (Supreme Court 1984) this court recognized that standing and ripeness, while partially overlapping, are 2 separate doctrines;

> "All of the doctrines that cluster about Article III — not only **standing** but mootness, **ripeness**, political question, and the like — relate in part, and in different though overlapping ways, to an idea, which is more than an intuition but less than a rigorous and explicit theory, about the constitutional and prudential limits to the powers of an unelected, unrepresentative judiciary in our kind of government." *Vander Jagt* v. *O'Neill*, 226 U. S. App. D. C. 14, 26-27, 699 F. 2d 1166, 1178-1179 (1983) (Bork, J., concurring).

Judge Camp, *sua sponte,* raised the issue of ripeness – in the order of dismissal - and without briefing or discussion in open court then ruled on it.

The essence of Due Process (5th and 14th Amendments) is notice and opportunity to be heard; which Petitioner has been deprived of here.

3) All parties, before dismissal, briefed the District Court on its discretion to stay federal proceedings and remand the state matters to first build the record before Federal adjudication.

The District Court then issued an order dismissing the RICO claims and requiring the filing of a state administrative action, requiring an order from this administrative state agency declaring entitlement to workers compensation benefits[9], and the value of this entitlement, before the re-filing of the federal RICO claim.

The filing of a state administrative claim does not toll the statute of limitations for the filing of a federal RICO claim; and there is no provision in any body of law guaranteeing a right to initiate a federal action for a RICO claim after the conclusion of a state workers compensation claim – for which the statute of limitations has run.

Here, the District Court did by judicial fiat what congress has refused to do – prevent a viable RICO claim with a worker's compensation matter somehow attached from being adjudicated.

Petitioner's constitutionally protected right of access to the courts, (1st Amendment) has been improperly denied, where, as here, a court order is impossible to comply with. (The time it would take to go through an administrative hearing and then 4 layers of judicial review would extend past the final statute-of-limitation date for filing a federal RICO case)

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[9] After ignoring an already issued administrative judge order declaring an entitlement to workers compensation benefits.

The Eleventh Circuit, by requiring adjudication of facts in a forum where fraud is not provable and requiring this order as the basis of a federal action has denied petitioner the right of trial by jury, to determine the facts supporting a federal claim as guaranteed by the 7th Amendment. (Nothing in the District Court's order indicates that the doctrine of *res judica* does not apply here – just the opposite is expressed.)

The Eleventh Circuit, by recognizing a state administrative forum in the manner propounded in the District Court order, requiring adjudication of facts in a state forum where fraud is not provable, and having the findings used as the basis of denying federal relief, the District Court has recognized a state's interest as being superior to that of a federal interest in violation of the *Supremacy Clause* of the U.S. Constitution.

As held in Lopez v. SB Thomas, Inc., 831 F. 2d 1184 – (Court of Appeals, 2nd Circuit 1987):

> "But, we do not read the workers' compensation law to deny relief under a federal statute. *See Madison v. Cinema I*, 115 Misc.2d 324, 326-27, 454 N.Y.S.2d 226 (N.Y.Civ.Ct.1982). Were state law to erect such a bar, it would clearly run afoul of the Supremacy Clause of the U.S. Const. Art. VI, cl. 2. *See Hamm v. City of Rock Hill*, 379 U.S. 306, 315, 85 S.Ct. 384, 391, 13 L.Ed.2d 300 (1964); *Kirkland v. New York State Dep't of*

> *Correctional Facilities,* 628 F.2d 796, 801 (2d Cir.1980), *cert. denied* sub nom, 450 U.S. 980, 101 S.Ct. 1515, 67 L.Ed.2d 815 (1981); *see also St. Martin Evangelical Lutheran Church v. South Dakota,* 451 U.S. 772, 780, 101 S.Ct. 2142, 2147, 68 L.Ed.2d 612 (1981) (courts should construe statutes to avoid raising doubts about their constitutionality)."

District Court Order is in Conflict with Supreme Court Precedent

The District Court went awry when it chose to consider the RICO case a mere extension of a worker's compensation claim instead of recognizing (as pled) that they are 2 separate matters. The court reasoned that any RICO injury and recovery flowed from a personal workplace injury and "the SWCB[10] has not determined the value" of the claim and until this was completely adjudicated, ripeness could not be established.

This extended "but for" analysis completely misses the mark.

In American Fire & Casualty Co. v. Finn, 341 U.S. 6 (1951) the US Supreme Court established, distilled to uber simplicity, the number of insults determines the number of causes-of-actions. This position has been restated in a number of cases and federal practice manuals such as Wilson v. New York

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[10] State Board of Worker's Compensation

Terminal Warehouse Co., Inc., 398 F. Supp. 1379 – (Dist. Court, MD):

> "* * * where a plaintiff sues to enforce two or more distinct rights, or to redress their invasion, he has as many causes of action; and although modern procedure permits him to and he does join the various defendants, because of the presence of a common question of law or fact, plaintiff's claims are separate and independent for removal purposes." [footnotes omitted] 1A Moore's Federal Practice ¶ 0.163[4-5]

Petitioner sued for 2 distinct rights, the first a RICO claim based on fraud, and second a worker's compensation claim which is based on a personal injury. A personal injury neither causes fraud nor does it give rise to a RICO claim any more than fraud directly causes a physical injury or gives rise to a worker's compensation claim. These matters are separate and distinct in time, place, and circumstances; one serves to remediate a federal purpose and the other a state purpose; the remedies are likewise different.

Sedima, S.P.R.L. v. Imrex Co., Inc., 473 U.S. 479, 496, 105 S. Ct. 3275, 3285 (1985). established that damages flow from the predicate acts themselves. This case has numerous points of ripeness and the district Court improperly cherry-picked a potential

injury to property claim[11] as a basis to dismiss this case. Section 1964(c) of Title 18 of the United States Code allows civil RICO actions by individuals "injured in his business or property by reason of a violation" of Section 1962. 18 U.S.C. § 1964(c). This is a singular requirement and nothing here indicates that congress intended for every possible injury to be ripe.

The complaint established RICO ripeness through fraudulent interference with business in the order they occurred – The first two are:

A) Interfering with medical care through fraudulent means;

This court has long recognized the doctor-patient business relationship and both Roe v. Wade, 410 U. S. 113 (1973), and Doe v. Bolton, 410 U. S. 179 (1973), established, this species of business relationship is worthy of constitutional protection. The fundamental right to privacy, guaranteed by the Fifth and Fourteenth Amendments to the U. S. Constitution, protects here against unwarranted invasions of privacy by federal or state entities, or arms thereof. But even that right is not absolute and must be weighed against the state or federal interest at stake.

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[11] The money benefits owed may properly be classified as "property" or "business" depending on the circumstances of denial.

The state of Georgia has claimed a state interest where employers (inclusive of their claims handlers) indemnify a physician's fee for services to care for an injured worker[12]. This allows an employer, acting under color of law, access to records and the physician office for the sole purpose of assuring that care given serves the remedial purposes of alleviating pain-and-suffering and rehabilitation – and does not exceed this. Such allowed privacy intrusion allows the employer to act as an "interested observer" only; this limited authority provides absolutely no power to act unilaterally to alter the direction the medical care plan takes. Should an employer disagree with the medical care plan, they are required by law to file an action in the SBWC and challenge it there[13]. After a proper hearing the *state* will determine medical necessity.

In this case, Chailland and HA[14], acting outside the scope of this color-of-law authority, granted by the State of Georgia, bypassed the protections of the SBWC administrative process and using fraudulent means altered the physician-patient dialog. (Business relationship) (Of note, the care plan was never challenged as being inappropriate.)

To restate the 11th Circuit ruling; Petitioner must be entitled to benefits from a state program of workers compensation before he can establish an entitlement to protection of a constitutionally protected business

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[12] O.C.G.A. 34-9-207

[13] O.C.G.A. 34-9-17.

[14] Inclusive of their employees, agents and corporate officers.

right. The District Court (and later the Circuit Court) got it backwards. A constitutionally protected business matter was established the moment a bona fide doctor-patient relationship was established; If there is a burden of proof requirement here, it is for Respondents to show they had a legal right to intrude into this business relationship and that they acted within the scope of this legal authority. To partially restate Petitioners complaint; Defendants, using the predicate acts of Fraud, interfered with a constitutionally protected business matter. The 11th Circuit got it wrong; establishment of a state entitlement is not a requirement to redress injuries of a constitutional business nature (Supremacy Clause). This case was ripe the moment fraud was introduced into, or manipulated, the physician-patient dialog.

B) Interference with business relationship:

Georgia law intends that an injured employee be provided immediate care and lost wages[15] without a judicial hearing. This is done as a self-determination and gives employers the right to investigate and challenge the entitlement to benefits within 60 days of the accident; once started, payment of benefits may only be stopped after 60 days under a change-of-condition challenge in the SBWC initiated by the payer of benefits[16]. These

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[15] O.C.G.A. 34-9-221

[16] O.C.G.A. 34-9-221(h)

benefits are a statutory promise to pay and may be enforced as a contractual obligation.[17]

Where an employer is insured against liability in these matters, they are to "immediately" turn the matter over to the insurance company for investigation and payment[18].

Here HA and Chailland first failed to notify the insurer of the accident, and when they did they provided fraudulently uttered documentation intended to deceive the insurer and thereby limit or prevent payments to Petitioner.

The District Court correctly held that Petitioner alleged Respondents "conspired to obstruct."[19] Chailland and HA using fraud interfered with Petitioners contractual business matters. Any damages here flow from the fraud (*Sedima*) and not a workplace injury. RICO allows damages not only where the conspiracy was wholly successful, but where it was attempted. Here too, this case was ripe for a second time when fraud was injected into Petitioners business matters.

In the Circuit Court, Petitioner went on to outline 4 points of ripeness. Only 1 point of ripeness is required – not every potential point of ripeness.

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[17] O.C.G.A. 34-9-124(a)(b)

[18] SBWC form WC-1 directions.

[19] Violation of 18 USC 1962(d) RICO Conspiracy

An injury to business does not require an established value to be ripe – the value of these matters, even if only nominal, is found in an enlightened jury. (Not the SBWC.)

Where there is an independent original jurisdiction federal claim, the federal courts may exercise jurisdiction over a state claim for workers compensation pursuant to 28 USC 1441(c).

Circuit Court Proceedings

The 11th Circuit assumed jurisdiction under 28 U.S.C. § 1291.

Petitioner notified the Circuit Court that this was a matter of First Impression and requested oral argument. The Circuit Court denied oral argument and issued a *per curiam*, non published opinion.

The appeal was based on three assertions:

1) Though the RICO ripeness case was a first impression, the 11th Circuit had experience with fraud based complaints with attached workers compensation matters. The District Court order caused a split from 2 previous rulings at the District Court level and a departure from established precedent at the Circuit level.

The Eleventh Circuit neither addressed the split nor resolved it. The Supreme Court is not being asked to

resolve this 11th Circuit split, but merely to cause this matter to confirm to Supreme Court precedent.

2) Petitioner presented and preserved claims that this case was ripe for adjudication. This was done from 2 legal positions. The first illustrated the impossible hardship (irreparable injury) the District Court order created, and second that the District Court used the wrong standard for determining ripeness. Petitioner's hardship claim has never been ruled on.

3) The District Court's order caused a deprivation of constitutionally protected rights. The 11th Circuit neither addressed nor ruled on the merits of any constitutional claim.

Constitutional Deprivation:

As noted in 2) above, Petitioner argued the impossible hardship (irreparable injury) that the District Court order presented; this argument may be found in the Opening Brief of Plaintiff-Appellant on page 23 under the heading, Justice Delayed is Justice Denied. The Supreme Court though will not find any order or memorandum of law addressing this – It was simply ignored – And was never ruled on.

By refusing to rule on the merits of this impossible hardship (irreparable injury) ripeness argument, the 11th Circuit has denied Petitioner his Constitutional

Due Process rights of notice and opportunity to be heard (5th and 14th Amendments).

This same argument of Deprivation of Due Process under the US Constitution (5th and 14th Amendments) is also present where the 11th Circuit neither addressed nor ruled on the merits of the constitutional challenge to the District Court's order.

Error Inconsistent with Supreme Court Precedent:

The review standard was *de novo.* The 11th Circuit owed no deference to the lower court's decision Whatley v. CNA Ins. Co., 189 F.3d 1310, 1313 (11th Cir. 1999) and accepts all allegations of the complaint as true and construes the facts in the light most favorable to the plaintiff. Harry v. Marchant, 237 F.3d 1315, 1317 (11th Cir. 2001).

The 11th Circuit though deferred completely to the finding of facts of the District Court and then reviewed only the application of law it used in its ruling. This is more consistent with the review standard *Abuse of Discretion* or *Clearly Erroneous.*

To date there has been no hearings of any kind in this matter. The Circuit Court was on equal footing with the District Court since no credibility or evidentiary determinations were made. The 11th Circuit though clearly did not accept all the allegations pled as true, ie. assuming, *arguendo*, property damage ripeness is required in this matter; Petitioner pled specifically he was entitled to wage

benefits and medical benefits[20] – giving O.C.G.A. guidance[21] for figuring the value, where drug receipts for out of pocket expenses were paid and available, attaching to his complaint an administrative law judge issued ORDER declaring petitioner was entitled to both these types of benefits[22]; And showing that in response Respondents pled that recovery of these benefits was – to use their word[23] - "probable."

The 11th Circuit required judicially certified proof of pleading allegations before accepting the allegations as true – A higher standard than is required at the Rule 12(b)(1) stage of litigation; Ruling until such proof is provided, the federal courts did not have subject-matter jurisdiction over a federal RICO claim.

REASONS FOR GRANTING THE PETITION

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[20] The complaint shows the date of injury, the date – over a year later – that respondents first challenged entitlement to benefits; and that only 12 payments had been made. Simple arithmetic gives at least a ball-park estimation of owed benefits.(52-12 weeks paid = 40 weeks owed times weekly entitlement = deprivation/ concrete injury)

[21] O.C.G.A. 34-9-260

[22] The 11th Circuit refused to recognize the Georgia SBWC ORDER section that had determined Petitioner was entitled to both medical and wage benefits; The 11th Circuit recognized only the portion of the SBWC ORDER declaring a complaint and request for hearing was necessary to determine the *value* and any continuing benefits. No litigation was pending in the SBWC.

[23] Tense changed for sentence structure correctness.

The matters presented in this appeal strike a chord at the very soul of most Americans: The right to be free of intrusion into personal matters; the right to be free from capricious, wanton actions of state actors – or those acting under the guise of color of law.

I. This Court has already recognized the importance of these matters

In Roe v. Wade, 410 U. S. 113 (1973), and Doe v. Bolton, 410 U. S. 179 (1973), this court recognized the constitutionally protected business status of a doctor-patient dialog and curtailed a state's intrusion into it absent a compelling reason.

In this matter, the court is being asked to recognize that the protected status of the doctor-patient relationship curtails those acting under color of law and that fraudulent intrusion into this relationship is worthy of federal recourse.

This case presents significant unanswered constitutional questions.

II. Guidance is Needed to Resolve Conflict among the Lower Courts

There is absolutely no consensus among the circuits where federal RICO claims with a state workers' compensation matter is somehow attached.

In the 6th Circuit case of Brown et al v Cassens, et al, 546 F3d. 347 (2008), heard on remand from the US Supreme Court, the 6th Circuit found standing and remanded the case for proceedings; the District Court found the Circuit Court's opinion "*dicta*" dismissed the case, finding, effectively, that no set of circumstances would ever permit a state workers' compensation matter to be attached to a federal RICO claim. Plaintiff's workers compensation was conclusively established in a state court forum concurrently with the RICO claim. This case is back before the 6th Circuit on appeal for the 3rd time. (Case No. 10-2334).

In the present case, the 11th Circuit is requiring a successful adjudication in a state forum, showing the *accrued value*, before the filing of a federal RICO claim. On a motion to compel, allowed before suit is filed, the administrative court judge found from the pleadings that Petitioner was entitled to both wage and medical benefits.

In Gianzero, et cal, v Wal-Mart Stores, Inc, et al, 09-cv-00656, 2010 U.S. Dist. LEXIS 98900 (September 3, 2010) (*cert denied*) the District Court has granted class-action status; this case could easily represent 1000's of plaintiffs. Some of the alleged victims (class members) have successfully concluded the state administrative process, others are in the middle, and some have never started the process.

'The court found:

> In a general fashion, the plaintiffs allege that they suffered damages when their treatment was withheld, delayed and/or denied as a result of the defendants' improper and unlawful efforts to control and manipulate the system of medical care providers. [Order Denying Defendants' Motion to Dismiss, Doc 171, page 2]

The district court denied defendants' Rule 12(b)(1) motions to dismiss, finding these allegations established standing:

> Although described in general terms in the plaintiffs' complaint, withholding, delaying or denying medical treatment is a concrete and particular injury in fact sufficient to establish standing. The defendants' motion to dismiss the complaint under Fed R Civ P 12(b)(1) for lack of standing must be denied.

Petitioner's complaint in this matter is far more explicit.

The lower courts can't decide to what extent state administrative adjudication should be required, if any; and while one court grants class action status another rules the 2 matters can't be combined. There is absolutely no consensus in the lower courts; guidance is desperately needed here.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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Pro Se

February 2011

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
NOVEMBER 9, 2010
JOHN LEY
CLERK

No. 10-11706.
Non -Argument Calendar.

D.C. Docket No. 3:09-cv-00004-JTC

BENNON L. PRINE, JR.,

Plaintiff-Appellant,

versus

CHAILLAND INC.,
HOSPITAL AMBULANCE LLC,
LUMBERMEN'S UNDERWRITING ALLIANCE,
DONALD WALTERS,
JOHN AND/OR JANE DOE, et al.,

Defendants-Appellees.

Appeal from the United States District Court
For the Northern District of Georgia

(November 9, 2010)

Before WILSON, MARTIN and FAY, Circuit Judges.

PER CURIAM:

Bennon L. Prine, Jr. was a paramedic, working for a company (Chailland) that provides paramedics for an ambulance service in Georgia (Hospital Ambulance). Prine injured his wrist and shoulder while transporting an overweight patient, requiring surgery. After receiving some temporary worker's compensation benefits, Prine became frustrated by the delay in receiving additional benefits and the administrative process, and abandoned his administrative recourse under Georgia law. Prine filed an action in the district court against Chailland, Hospital Ambulance, their insurers and various other executives with those companies asserting claims for worker's compensation benefits pursuant to Georgia law and claims under the federal Racketeer Influence and Corruption Organizations Act (RICO). The district court dismissed the claims for Georgia's worker's compensation benefits for lack of subject matter jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1). The court found that the RICO claims were not ripe, and refused to exercise supplemental jurisdiction over Prine's remaining state law claims. Prine appeals.

We have thoroughly reviewed the record, the briefs, the arguments by Prine and the defendants' counsel, and we are unable to find any error in the judgment of the district court.

First, the district court correctly concluded that the administrative scheme set up by Georgia's Worker's Compensation Act provided Prine his exclusive remedy for claims arising out of his on-the-job injuries. Because the Georgia State Board of Worker's Compensation ("SBWC") has exclusive jurisdiction over claims under the Workers' Compensation Act, courts "[do] not have jurisdiction to order the payment of workers' compensation benefits." *Royal Indemnity Co. V. Georgia Insurers Insolvency Pool,* 644 S.E.2d 279, 280 (Ga. Ct. App. 2007). We have held that the exclusivity of a state workers' compensation scheme deprives a federal district court of subject matter jurisdiction to the extent that a state court would decline to exercise jurisdiction over an employee's work related claims. *See* *Connolly v. Maryland Cas. Co.*, 849 F.2d 525, 526—28 (11th Cir. 1988). Georgia's Workers' Compensation Act provides benefits to employees who are injured in accidents "arising out of and in the course of" their employment. *Doss v. Food Lion, Inc.*, 477 S.E.2d 577, 577 (Ga. 1996). When the workers' compensation act applies, it provides an employee's exclusive remedy against his employer, as well as the employer's worker's compensation carrier. *Id.* at 578 (employer); *United States Fire Ins. Co. v. Day*, 221 S.E.2d 467, 469 (Ga. Ct. App. 1975) (insurance carrier).

Since Prine was provided some temporary payments, we note that where an employer makes voluntary payments, the employer cannot controvert the employee's right to compensation unless (1) a notice to controvert is filed with the State Board of

Workers' Compensation ("SBWC") within 60 days of the due date of the first payment of compensation or (2) the notice to controvert is based on a change in condition or newly discovered evidence. O.C.G.A. § 34-9-221(h). Thus, where the employer does not file a notice to controvert within 60 days of the first payment's due date, the employer is barred from controverting liability for the employee's claim unless it can show a change in condition or newly discovered evidence. *Carpet Transp., Inc. v. Pittman*, 370 S.E.2d 651, 655 (Ga. Ct. App. 1988) (holding that § 34-9-221(h) acts as "a 60-day statute of limitation, the running of which protects the employee's right to continued compensation from attack by the employer's/insurer's `except' on the specified grounds"). However, the Workers' Compensation Act also allows an employer to unilaterally suspend benefits if (1) an employee's treating physician releases him to return to work with restrictions; (2) the employer proffers a suitable job; (3) the employee refuses to attempt the proffered job; and (4) the employer files appropriate documentation with the SBWC. O.C.G.A. § 34-9-240(b).

Here, the pleadings reflect that although Prine was contacted twice about returning to work in a light-duty position, Prine declined to avail himself of this opportunity. Under such a circumstance, his employer had the right to unilaterally suspend benefit payments if it followed certain requirements under O.C.G.A. § 34-9-240(b)(2). However, the extent of employer liability is within the exclusive jurisdiction of the SBWC. The SBWC must be afforded the opportunity to determine the value, if

any, of the worker's compensation benefits owed to Prine. Since the SBWC never resolved employer liability, we find that the district court correctly determined that it lacked jurisdiction to order the employer to make worker's compensation benefit payments. Prine's claims were dismissed without prejudice, providing him an opportunity to return to the Georgia SBWC where he can file a new Form WC-14, requesting an administrative hearing.

Accordingly, we conclude that the district court correctly found that it did not have jurisdiction to order the defendants to pay Georgia workers' compensation benefits because the SBWC has exclusive jurisdiction over claims under Georgia's Workers' Compensation Act, and the workers' compensation scheme provides a remedy for the alleged intentional delay in making payments to Prine.

Next, as to Prine's argument that the district court applied the wrong standard when evaluating the ripeness of his RICO claims, we similarly find no error because it is clear that resolution of the RICO claims is dependent on the resolution of the worker's compensation claims. "The ripeness doctrine protects federal courts from engaging in speculation or wasting their resources through the review of potential or abstract disputes." *Digital Props., Inc. v. City of Plantation*, 121 F.3d 586, 589 (11th Cir. 1997). "A claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all." *Texas v. United States*, 523 U.S. 296, 300, 118 S.Ct. 1257, 1259 (1998) (quotation omitted). Because pursuing recovery through the SBWC could mitigate any

injury alleged by Prine such that his RICO damages cannot be ascertained, or may not have occurred at all, Prine's RICO claim was not ripe for review. *See Liquidation Comm'n of Banco Intercontinental, S.A. v. Renta*, 530 F.3d 1339, 1351 (11th Cir. 2008).

Finally, Prine appears to contend that there was error in the dismissal of his state law claims. Prine's state law claims included allegations of unjust enrichment, unfair deceptive acts or practices in the business of insurance, and intentional infliction of emotional distress. On appeal, Prine asserts in a section heading that the district court had jurisdiction over all of his claims, but he offers no argument addressing the district court's refusal to exercise supplemental jurisdiction over his state law claims. Although we liberally construe *pro se* pleadings, a *pro se* litigant abandons an issue where he does not brief it on appeal. *See Timson v. Sampson*, 518 F.3d 870, 874 (11th Cir. 2008). We doubt, in any event, that there was any abuse of discretion arising from the district court's dismissal of the state-law claims, since 28 U.S.C. § 1367(c)(3) allows district courts to decline to exercise supplemental jurisdiction over a claim if "the district court has dismissed all claims over which it had original jurisdiction."

AFFIRMED.

Case 3:09-cv-00004-JTC Document 39 Filed 03/17/2010 Page 1 of 10

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION

BENNON L. PRINE, JR.
Plaintiff,
v.
CHAILLAND INC., et al.,
Defendants.

CIVIL CASE NO. 3:09-CV-4-JTC

ORDER

This matter is currently before the Court on the motions to dismiss filed by Defendant Lumbermen's Underwriting Alliance ("Lumbermen") [# 2] and Defendant Donald Water [# 7].[24] Plaintiff brought this action *pro se* against a number of defendants alleging violations of the State and Federal Racketeer Influenced and Corrupt Organizations Act ("RICO"), a claim for workers compensation benefits pursuant to O.C.G.A. § 34-9-1, and various state law torts. Each of Plaintiff's

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[24] Defendants Chailland, Inc. and Ann Morgan-Mitchell [# 8], Cambridge Integrated Services Group, Inc. and Robin DeMello [# 16], and Hospital Ambulance, LLC and Edward Wingard [# 28] all adopted the motion to dismiss filed by Defendant Lumbermen. 1

claims arises out of Defendants' alleged efforts to obstruct and prevent him from receiving workers' compensation benefits, to which he claims he is entitled.[25] Defendants move to dismiss the Complaint for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure. The Court **GRANTS** Defendants' motions to dismiss.

I. Factual Background[26]

A. The Parties to this Dispute

Plaintiff is an Emergency Medical Technician ("EMT") working in Georgia. (Pl.'s Compl. at ¶ 11-12.) Plaintiff is employed by Defendant Chailland, who provides EMTs to other companies. (Id. at ¶ 15.) Defendant Ann Morgan-Mitchell is an employee of Defendant Chailland. (Id. at ¶ 22.)

---

[25] To the extent that Plaintiff's Complaint purports to assert claims on behalf of similarly situated individuals, the Court **DISMISSES** these claims because a plaintiff proceeding *pro se* may not bring claims on behalf of others. Wallace v. Smith, 145 F. App'x 300, 302 (11th Cir. 2005); Fymbo v. State Farm Fire & Cas. Co., 213 F.3d 1320, 1321 (10th Cir. 2000) ("A litigant may bring his own claims to federal court without counsel, but not the claims of others."); Oxendine v. Williams, 509 F.2d 1405, 1407 (4th Cir. 1976); Wesley v. United States Dist. Court for the S. Dist. of Fla., No. 09-23090, 2009 WL 3617814, at *1 (S.D. Fla. Oct. 29, 2009).

[26] The Court accepts as true the well-pled factual allegations in Plaintiff's Complaint.

Defendant Hospital Ambulance is an ambulance service in Georgia. (Id. at ¶ 17.) Defendant Chailland provides EMTs for Defendant Hospital Ambulance. (Id. at ¶ 18.) Defendant Edward Wingard is the Executive Director of Operations for Defendant Hospital Ambulance, and Defendant Donald Walters is the Director of Operations for Hospital Ambulance. (Id. At ¶¶ 23-4.)

Defendant Lumbermen is an insurance company. (Id. at ¶ 19.) Defendant Cambridge Integrated Services Group, Inc. ("Cambridge") is the insurance servicing agent for Defendant Lumbermen. (Id. at ¶ 20.) Defendant Robin DeMello is an employee of Defendant Cambridge and handled the insurance claim at issue in this dispute. (Id. at ¶ 21.)

B. The Incidents Giving Rise to this Dispute

While working as an EMT for Defendant Hospital Ambulance, Plaitniff was dispatched to a hospital to transfer a patient to her private residence. (Id. at ¶ 152(d).) The patient, who weighed approximately 425 pounds, would not fit on the stretcher. (Id.) The combined weight of the patient, the oxygen and related medical apparatus, and stretcher was 565 pounds. (Id. at ¶ 155.) Plaintiff contends that during the course of transporting the patient he injured his wrist and shoulder. (Id. at ¶ 125). Both injuries required surgery. (Id.)

After his injury, one of the Defendants paid Plaintiff temporary total disability benefits in the amount of

$450.00 per week for eleven weeks. (Ex. 1 to Pl.'s Compl. at p.1; Pl.'s Compl. at ¶ 125.) Plaintiff also received some medical treatment for his injuries, although it is unclear from the Complaint whether the insurer/employer or the Plaintiff paid for the two surgeries. (Ex. 1 to Pl.'s Compl. at p. 1.)

Eight months after the injury, Defendants refused to pay for Plaintiff's prescription refill. (Pl.'s Compl. at ¶ 125.) In addition, Defendants ceased paying benefits or denied liability for the injury. (Ex. 1 to Pl.'s Compl. at p. 2; Pl.'s Compl. at ¶¶ 130-32.) Plaintiff then served the Georgia State Board of Workers Compensation ("SBWC") and Defendants Hospital Ambulance, Chailland, and Lumbermen with a Form WC-14 Notice of Claim.4 (Id. at ¶ 26.) Plaintiff also provided Defendants Hospital Ambulance and Chailland with a WC-102 Request for Documents. (Id. at ¶¶ 29, 31.) Subsequently, Plaintiff, filed a motion to compel the requested documents with the SBWC. (Id. at 32.)

An Administrative Law Judge reviewed Plaintiff's motion to compel and Notice of Claim, finding that:

> After a review of the record, I find there are issues of fact and law concerning the employee's request. The employee is alleging an entitlement to workers' compensation benefits and it appears the employer/insurer has, at some point, denied liability for what the employee is requesting. Under these circumstanced, an evidentiary hearing is

> necessary to determine the relief requested by the employee, and thus, resolution of the issue by motion is not appropriate.
>
> As such, I find an evidentiary hearing is needed to resolve the outstanding issues in this claim. Upon the filing of a Form WC-14 requesting a hearing, the employee may reassert his request for workers compensation benefits before the Trial Division. Therefore, at this time, I decline to address the merits of the employee's motion.

(Ex. 1 to Pl.'s Compl. at pp. 1-2.) Plaintiff did not file a new Form WC-14 requesting a hearing. Instead, Plaintiff initiated this lawsuit alleging State and Federal RICO claims arising out of Defendants' alleged efforts to prevent him from receiving workers' compensation benefits that he contends he is "rightly entitled to, after suffering a compensable injury during employment . . . ." (Pl.'s Compl. at ¶ 5.) Plaintiff contends that Defendants failed to file the proper forms with the SBWC, submitted fraudulent documents to the SBWC, and conspired to obstruct his efforts to receive workers' compensation benefits. (Pl.'s Compl. at ¶¶ 53, 114-15.)

II. Motion to Dismiss Standard

A defendant may assert a Rule 12(b)(1) motion to dismiss for lack of subject matter jurisdiction on either facial or factual grounds. Carmichael v. Kellogg, Brown & Root Services, Inc., 572 F.3d 1271,

1279 (11th Cir. 2009). "Facial challenges to subject matter jurisdiction are based solely on the allegations in the complaint." Id. When ruling on a facial challenge, the court accepts the well-pled allegations in the complaint as true. Id. "However, where a defendant raises a factual attack on subject matter jurisdiction, the district court may consider extrinsic evidence such as deposition testimony and affidavits." Id. Defendants assert a facial challenge, the court accepts the well-pled allegations in the complaint as true. Id. "However, where a defendant raises a factual attack on subject matter jurisdiction, the district court may consider extrinsic evidence such as deposition testimony and affidavits." Id. Defendants assert a facial challenge to the Court's subject matter jurisdiction; therefore, the Court limits its review to the allegations in the Complaint. Id.

III. Analysis

A. Plaintiff's Claim for Workers' Compensation Benefits

Plaintiff's Complaint contains a claim for workers compensation benefits pursuant to Georgia's Workers' Compensation Act. The Georgia Workers' Compensation Act "is designed to provide the exclusive remedy against an employer for injuries by accident arising out of and in the course of employment." Brazier v. Travelers Ins. Co., 602 F. Supp. 541, 544 (N.D. Ga. 1984) (Ward, J.); Apperson v. S. States Coop., No. 6:04cv20, 2005 WL 2290200, at * 2 (M.D. Ga. 2005) ("It is axiomatic that workers' compensation is the exclusive remedy for on-the-job

injuries suffered by employees during the course of their employment."); Royal Indemnity Co. v. Ga. Ins. Insolvency Pool, 644 S.E.2d 279, 280 (Ga. Ct. App. 2007). "The Workers' Compensation Act, thereby bars all suites at common law brought by an employee against her employer for workplace accidents covered by the terms of the statute." Brazier, 602 F. Supp. at 544. Accordingly, where an employee asserts a claim for on-the-job injuries suffered during the course of his or her employment, such claims are subject to dismissal because the SBWC has exclusive jurisdiction over such claims. See Royal Indemnity, 644 S.E.2d at 280; see also United Food & Commercial Workers Union v. United Food and Commercial Workers Int'l Union, 835 F.2d 848, 850 (11th Cir. 1988). As Plaintiff admits in his Complaint, he seeks redress for an injury that "arose out of, and in the course [of his] employment. . . . " (Pl.'s Compl. At ¶ 121.) The Georgia Workers' Compensation Act provides the exclusive remedy for such a claim, and, thus, Plaintiff must assert this claim before the SBWC. Accordingly, Plaintiff's claim pursuant to the Georgia Workers' Compensation Act is subject to dismissal. The Court **GRANTS** Defendants' Motions to Dismiss [# 2, 7, 8, 16, 28] as to Plaintiff's Claim brought pursuant to O.C.G.A. § 34-9-1.

B. Plaintiff's Federal RICO Claims

Plaintiff alleges that Defendants violated the Federal RICO statutes by preventing him from receiving his workers' compensation benefits. (Pl.'s Compl. at ¶ 5; Pl.'s Br. in Resp. to Defs.' Mot. to

Dismiss at p. 21.) Defendants contend that Plaintiff lacks standing to assert RICO claims because the SBWC has yet to determine whether Plaintiff is even entitled to workers' compensation benefits. Section 1964(c) of Title 18 of the United States Code limits civil RICO actions to individuals "injured in his business or property by reason of a violation" of Section 1962. 18 U.S.C. § 1964(c). A plaintiff may not recover under RICO for losses stemming from personal injury or pecuniary losses that result from a personal injury. Pilkington v. United Airlines, 112 F.3d 1532, 1536 (11th Cir. 1997); Moore v. Potter, 114 F. App'x 803, 805 (11th Cir. 2005). As the United States Court of Appeals for Eleventh Circuit has explained, "the ordinary meaning of the phrase 'injured in his business or property' excludes personal injuries, including the pecuniary losses there from." Grogan v. Platt, 835 F.2d 844, 847 (11th Cir. 1988). Thus, a plaintiff only has standing to bring a RICO action when he has been injured in his business or property. Sedima, S.P.R.L. v. Imrex Co., Inc., 473 U.S. 479, 496, 105 S. Ct. 3275, 3285 (1985).

Although Defendants assert this issue as one of standing, it is better framed as one of ripeness. See Liquidation Comm'n of Banco Intercontinental, S.A. v. Renta, 530 F.3cd 1339, 1350 n.14 (11th Cir. 2008). As both parties, acknowledge, the SWCB has not determined the value, if any, of the workers' compensation benefits owned to Plaintiff. In Renta, the Eleventh Circuit explained that:

> whether a plaintiff must pursue other remedies before a RICO claim depends on

> whether those other contingencies are sufficiently likely to mitigate the plaintiff's loss that damages in the RICO case cannot be ascertained, or may not have occurred at all. RICO need not necessarily be the claim of last resort, but neither can a plaintiff seek to treble damages that he did not actually incur.

Id. at 1351

Even assuming that the loss of workers' compensation benefits is an injury to Plaintiff's business or property within the meaning of RICO, Plaintiff's claims are not ripe. The Magistrate Law Judge instructed Plaintiff to file a new Form WC-14 requesting a hearing, so that the SBWC could determinate to what extent, if any, Plaintiff is entitled to workers' compensation benefits. As the Court previously explained, these are questions in the exclusive jurisdiction of the SBWC. See Brazier, 602 F. Supp. at 544; Royal Indemnity, 644 S.E.2d at 280. Until the SBWC renders a decision addressing the merits of Plaintiff's claim, this Court can neither ascertain the scope of Plaintiff's alleged damages or even determine whether any actual loss to his business or property occurred. Accordingly, Plaintiff's RICO claims are not ripe and subject to dismissal. The Court **GRANTS** Defendants' Motions to Dismiss [# 2, 7, 8, 16, 28] as to Plaintiff's Federal RICO Claims and DISMISSES without prejudice these claims.

C. The Remaining State Law Claims

None of Plaintiff's federal claims remain. Although Plaintiff asserts diversity jurisdiction in addition to federal question and supplement jurisdiction, diversity jurisdiction "applies only to cases in which the citizenship of each plaintiff is diverse from the citizenship of each defendant." Caterpillar Inc. v. Lewis, 519 U.S. 61, 68, 117 S. Ct. 467, 472 (1996). Both Plaintiff and a number of the Defendants are citizens of Georgia. Accordingly, Plaintiff has failed to meet his burden of pleading diversity jurisdiction. Mas v. Perry, 489 F.2d 1396, 1399 (5th Cir. 1974). To the extent any viable state law claim asserted by Plaintiff remains, the Court declines to exercise supplemental jurisdiction over such claims. See 28 U.S.C. § 1367(c)(3).

IV. Conclusion

The Court **GRANTS** Defendants' Motions to Dismiss [# 2, 7, 8, 16, 28]. The Court **DISMISSES without prejudice** the claims asserted in Plaintiff's Complaint. The Court **DIRECTS** the Clerk to **CLOSE** this case.

SO ORDERED, this 16th day of March, 2010.

s/ Jack Camp
JACK T. CAMP
UNITED STATES DISTRICT JUDGE